IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH
S.B. Civil Writ Petition No.2204/2007
Anand Kishore Vs. Addl. Civil Judge & Ors.

12.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

REPORTABLE

Shri Alok Garg for petitioner.

This is a writ petition filed at the instance of the defendant petitioner who is tenant of the landlord respondent nos.3 & 4. The petitioner in this writ petition has challenged the order dated 8.8.2006 passed by Additional District Judge No.2, Jaipur City whereby the appeal of the petitioner filed under Section 22 of the Rajasthan Premises Rent (Control and Eviction) Act against the order dated 4.4.06 determining

provisional rent under section 13(3) of that Act by Additional Civil Judge (JD) No.3, Jaipur City, Jaipur was dismissed.

I have heard Shri Alok Garg, the learned counsel for the petitioner.

Shri Alok Garg argued that the courts below have wrongly held that the petitioner had paid rent upto 30.9.88. The plaintiff claimed rent from 1.1.96 but the courts below determined the rent from 19.1.1993 and in doing so failed to consider the material available on record more particularly the plaint, written statement, affidavit of Shri Ramesh Chand Sharma @ Shri R.C. Gaur. The order passed by the courts below thus suffer from material irregularity because relief in excess of what was prayed has been granted. It was argued that rent had

infact been paid to Pushpa Devi and that has been admitted by Shri Ramesh Chand in his affidavit filed before the courts below. There was therefore no reason not to believe him. The learned courts below failed to appreciate that this Ramesh Chand Sharma used to collect the rent from the petitioner on behalf of the landlord Smt. Pushpa Devi under her authority and instructions. The courts below committed an illegality in not believing this version of the petitioner only on the ground that the name of Ramesh Chand was not mentioned in the written statement contrary to the settled principles of law that evidence need not be mentioned in the pleadings. When the basic pleading that rent upto the month of November, 1999 had been paid, then

whom this rent was paid would be matter of evidence which was not required to be controverted. The learned trial court therefore was wrong in law in not believing the affidavit of Ramesh Chand Sharma. It was argued that Smt. Pushpa Devi used to collect the rent on behalf of the landlady Smt. Geeta Devi who was living away from Jaipur being in government service and Pushpa Devi in turn has authorized Ramesh Chand to collect the rent on her behalf. It was argued that the trial court has thus erroneously determined the provisional rent which has been wrongly confirmed by the learned appellate court. Shri Alok Garg lastly argued that when affidavit of Ramesh Chand has been field in the evidence of the defendants and there was

no rebuttal either by producing any evidence to the contrary or by filing counter affidavit, there was no escape in law for the trial court but to accept what was stated in the affidavit. In support of his arguments, Shri Alok Garg relied on the judgment of this Court in Chhagan Lal Vs. Ram Babu, 1992(2) WLC (Raj.) 254, Smt. Anand Kanwar etc. Vs. State of Raj. & Ors., RLR 1991 (1) 270, Bhanwarlal Vs. Bhanwarlal, RLW 1951 page 220 and N.K. Bairwa & 7 Ors. Vs. Sripal Jain & Ors., 1998 WLC (Raj.) UC 354.

The perusal of the order passed by the first court would reveal that in the affidavit of Ramesh Chand which was filed subsequent to the filing of the written statements, he has asserted that he was grand son of Smt. Pushpa Devi and he

collected rent on her behalf upto December 1995, but there was no mention of Ramesh Chand in the written statement. It is only subsequently that by amendment in the written statements, the name of said Ramesh Chand was incorporated in para 8A of the written statement. The version which is therefore given for the first time through the affidavit, therefore, was not believed by the trial court. The trial court also found that there was no dispute between the parties about the agreed monthly rent of Rs.250 because in the written statement the defendant pleaded that as and when he paid the rent to the landlord, he would give receipt to him. Non production of receipt for the earlier period is sought to be explained with the help of the

affidavit and this would therefore lead to inference that the plaintiff did not make payment of the rent for that period. Against the backdrop of these facts, the trial court did not believe what was pleaded by the respondents in para 11 of the written statement and observed that the amount of rent of Rs.250/- was due from 19.1.1993. The learned appellate court also affirmed the order passed by the trial court.

Learned counsel for the petitioner in support of his argument has cited the authority that if the contents of an affidavit filed by one party are not denied by producing contrary evidence or affidavit in rebuttal, such contents have to be accepted as correct. It is settled law that a judgment is an authority for

what it actually decides and not what can be logically deduced therefrom. What therefore I find is that those judgments cannot be applied to the facts of the present case. In the facts of the present case when the sole basis of the suit for eviction is the default in the payment of rent, mere production of affidavit at a later stage asserting therein what did not form part of the pleadings in the originally filed written statements and then subsequent amendment of the written statement to bring the pleadings in tune with what was asserted in the affidavit, speaks otherwise of the bona fides of the defendants. Clearly, in the circumstances, therefore, the inference drawn by the trial court cannot be considered to be completely without

any basis.

In my considered view therefore neither of the orders passed by the courts below suffer from any such infirmity which may be described as error apparent on the face of the record so as to call for interference by this Court in exercise of its writ jurisdiction under Article 226 / 227 of the Constitution of India.

The writ petition being devoid of any merits is accordingly dismissed.

(Mohammad Rafiq),J.

Rs/-